

In the Matter of Carlos Olivencia, Electrician (M0245K), Jersey City School District
CSC Docket No. 2010-4059
(Civil Service Commission, decided January 25, 2012)

Carlos Olivencia appeals the removal of his name from the Electrician (M0245K), Jersey City School District eligible list on the basis that he failed a urinalysis examination.

By way of background, the appellant's name appeared as a first ranked eligible tied with eight other eligibles on the Electrician (M0245K), Jersey City School District eligible list. On July 14, 2008, the appellant's name was certified to the appointing authority. The appellant appeared in the fifth position on the certification. In disposing of the certification, the appointing authority requested that the appellant's name be removed since he was not medically cleared by its Medical Department due to a "negative and dilute" result when undergoing a pre-employment drug screening.¹ In support of its request for removal, the appointing authority submitted a laboratory report from Advanced Toxicology Network in Memphis, Tennessee stating that an initial screening of the appellant's urine sample on February 26, 2009 was "negative and dilute for all drugs tested." The certification was initially returned to the appointing authority by the Division of State and Local Operations (SLO) since the appointing authority indicated that the appellant had failed a medical examination. The appointing authority subsequently changed the disposition to "failed urinalysis examination" and the certification disposition was recorded by SLO on May 17, 2010.

On a Certification Disposition Notice dated May 17, 2010, the appellant was advised that his name had been removed. In a letter postmarked May 26, 2010,² the appellant challenged his test result. In support of his appeal, the appellant asserts that he was ordered by the school district's Medical Department to submit for a follow-up urine drug screening on July 27, 2009. The appellant encloses a letter dated August 18, 2009 from Donna Karaffa, RN, which stated that he had been medically cleared for employment and that Human Resources would contact him. Further, he states that nearly one year went by and he has not been contacted by Human Resources nor did he receive any further instructions regarding his

¹ The laboratory testing indicated that the specimen was diluted: the creatinine level was greater than 5mg/dl but less than 20 mg/dl and the specific gravity was greater than 1.001 but less than 1.003.

² Although the appellant's letter is not dated, the letter was referred to the Division of Merit System Practices and Labor Relations by SLO which indicated that the appeal was postmarked May 26, 2010.

medical clearance letter. Moreover, the appellant maintains that he is physically fit and works out five times a week and “consumes gallons of water to stay healthy.”

In response, the appointing authority, represented by Robert J. Pruchnik, Assistant General Counsel, states that as a result of the appellant not being medically cleared based on the February 26, 2009 urinalysis, it selected another qualified candidate for the position. Additionally, the appointing authority denies that the appellant was ordered by the school district’s Medical Department to present for a follow-up drug screening on July 27, 2009. Moreover, the appointing authority maintains that Ms. Karaffa’s August 18, 2009 letter cannot be construed as an offer or promise of employment on its behalf. Further, the appointing authority notes that on or about May 22, 2009, it notified this agency that the appellant was being removed from the eligible list for failing to be medically cleared for employment. Finally, the appointing authority claims that the appellant’s appeal should be dismissed on the grounds that it is untimely.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)3*, states that an eligible who is physically unfit to effectively perform the duties of the position may be removed from the eligible list. *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, also states that an eligible may be removed from an eligible list for other sufficient reasons as determined by the Civil Service Commission (Commission).

CONCLUSION

With regard to the timeliness of the appeal, *N.J.A.C. 4A:4-6.6(a)1* provides that an appeal shall be filed within 20 days of the notice of the action, decision or situation being appealed. In the instant matter, while the appointing authority initially disposed of the certification in May 2009, the certification was returned to it and was not recorded by SLO until May 2010. Accordingly, the appellant did not receive notice that his name was being removed until May 17, 2010. Therefore, his appeal postmarked May 26, 2010 was timely filed.

With regard to the merits of the appeal, it is clear from the record that the appellant’s initial drug screen result of “negative and dilute” was not a valid drug test since the dilution could have affected the detection of drugs in the appellant’s system. See Standridge, John B. MD, Adams, Stephen M. MD, and Zotos, Alexander P. MD, “Urine Drug Screening: A Valuable Office Procedure,” *American Family Physician*, March 1, 2010. This is the case regardless of the basis for the diluted result. Therefore, the fact that the appellant consumes gallons of water to stay healthy is irrelevant and his explanation does not validate the test. Further, although the appellant took another test at the direction of the school district’s Medical Department which cleared him for employment, it occurred only after the initial disposition of the certification by the appointing authority in May 1999, when

it requested his removal. Accordingly, under these circumstances, the appointing authority properly disposed of the certification and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.